

NEWS RELEASE

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BACKGROUND:

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FLEET CALL PROVIDES SMR SERVICE
TO 150,000 IN SIX MAJOR MARKETS

Fleet Call Inc., Bloomfield, N.J., is the second largest owner and operator of Specialized Mobile Radio (SMR) systems in the United States.

Fleet Call currently provides dispatch, mobile phone and other two-way radio services to customers who require private radio-based communications between fixed sites and mobile units, between mobile units themselves, and between mobile units and the public telephone network. It serves approximately 150,000 units in six major metropolitan markets: Los Angeles, San Francisco, New York, Chicago, Dallas and Houston. The spectrum in these markets is among the most congested in the country.

Formed in April 1987, the company embarked on a strategy of acquiring SMR systems that were at or near capacity and combining them to achieve management improvements and to create increased capacity through the use of technology.

-more-

Company-owned and operated SMR systems consist of approximately 1700 channels at 800 MHz and 400 channels at 900 MHz, the two frequency bands the Federal Communications Commission authorizes for SMR use.

In addition to providing radio dispatch and mobile telephone services through its SMR systems, Fleet Call also provides conventional two-way radio service and paging services; it also sells and maintains radio equipment and rents space on its radio towers to other mobile communications operators.

SMR and ESMR

In 1990, Fleet Call embarked on an ambitious program to relieve spectrum congestion and bring the benefits of an advanced communications technology to its SMR business. Fleet Call calls its proposal Enhanced Specialized Mobile Radio (ESMR). ESMR represents the next generation of SMR technology, combining advanced digital transmission techniques, sophisticated high-speed frequency-switching, and frequency re-use through multiple low-power base stations. The result: improved spectrum efficiency, greater system capacity, higher quality transmission and an increased variety of service choices. ESMR provides a dramatic 15-fold -- or more -- capacity increase, without requiring additional frequency allocation.

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Fleet Call has invested more than \$200 million in acquiring its SMR operations, almost half of which was financed through equity funds. Fleet Call's current annual revenues are approximately \$65 million, half of which come from SMR service revenues and the balance from sales and maintenance of subscriber equipment. Fleet Call expects to commit more than \$500 million to install ESMR in its six target markets.

Management Team

Fleet Call chairman Morgan O'Brien has been involved in the SMR industry since its inception. He has held several influential positions in communications law, including a partnership with the international law firm of Jones, Day, Reavis & Pogue and a variety of management and legal posts within the Federal Communications Commission.

Brian McAuley, president and chief executive officer, has extensive experience in the mobile communications industry, including cellular and paging. Before Fleet Call, he was senior vice president, chief financial officer and director at Millicom Incorporated, a company with significant mobile communications holdings. Prior to that, he was corporate controller of Norton, Simon Inc., a \$3 billion multinational consumer products and services company.

APPENDIX A-3

NARUC'S MAY 29, 1991 ERRATA TO REPLY APPENDIX B

May 29, 1991

Secretary
Federal Communications Commission
1919 M Street, N.W.]
Washington, D.C. 20054

RE: In the Matter of Fleet Call, Inc. Application
for Waiver and Other Relief to Permit Creation
of Enhanced Specialized Mobile Radio Systems
In Six Markets, FCC File No. LMK-90036.

ERRATA NOTICE

Dear Madam:

Attached please find materials which should have been included
as part of Appendix B of NARUC's May 10, 1991 Reply to Oppositions
in the above-captioned proceeding.

Copies have been served upon all parties on the attached
service list.

Respectfully Submitted,

James Bradford Ramsay
Deputy Assistant General Counsel

Enclosures

U.S. Investment Research

April 23, 1991

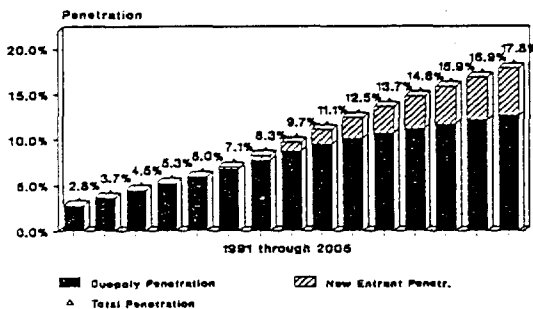
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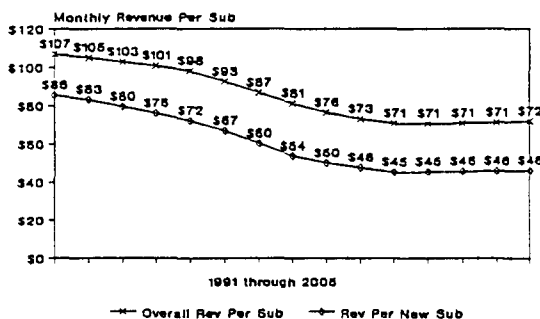
POP Out: The Changing Dynamics of the Cellular Telephone Industry

Cellular Penetration



- Competition should begin in next 3-4 years, putting pressure on cellular companies' pricing, market share, and cash flow.
- Penetration of U.S. population should exceed 12% by 2000 - but average usage should be much lower than today.
- Overvalued pure-play stocks include Cellular Communications, Contel, LIN Broadcasting, US Cellular, and Vanguard.
- Fairly valued pure-play stocks are McCaw Cellular and Metro Mobile.

Revenue Per Subscriber



Source: Morgan Stanley Estimates

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The wide disparity in per-pop values reflects the very different cash-flow generating capabilities of the various companies' markets, as well as the diverse private/public market weightings. A detailed company-by-company market analysis with supporting statistical data is provided

in the accompanying report, *The Cellular Pure Plays: Company Profiles*, which should be read in conjunction with this industry overview.

The following gives the reasoning behind each of the premises used in our forecasts.

Competition Is Coming

We believe the combination of spectrum availability and political and economic factors will attract one or more additional providers of advanced mobile services to most metropolitan markets by the mid- to late 1990s. While the added carriers will stimulate the overall demand for cellular services, they will also put pressure on pricing and, of course, on the market share of the existing duopolists. Because of the present carriers' broader coverage, market presence, and established systems, we expect them to capture a significant share of the growing market — just not all of it. The new entrants' primary selling point is likely to be price, given their lower initial service quality and recognition. We expect the price discount to be large enough to force the established providers to make at least a partial pricing response to maintain growth.

Spectrum Availability

A critical question regarding the potential for competition in cellular-type services is the amount of remaining space in the finite electromagnetic spectrum. This involves several issues. First, is it possible to open virgin spectrum for advanced mobile-type uses? Second, is it possible to share existing blocks of spectrum by overlaying mobile use on other existing applications? Third, is it possible to move existing users off one block of spectrum to make way for new users?

As for opening up new frequencies, the spectrum is fairly well allocated up through the 300 GHz range. Industry experts suggest that cellular applications would not work very well beyond 2 to 3 GHz. Because of their propagation characteristics, the higher bandwidth signals travel relatively short distances at any given power level, making the cost of the many cell sites necessary to cover an area prohibitive. Thus, the likelihood of opening unallocated spectrum for cellular applications is minimal.

The sharing of spectrum is more controversial, with significant implications for the degree of competition. Millicom (\$6) is experimenting in Houston and Orlando with code division multiple access (CDMA) as an overlay technology in the 1850-1990 MHz band, now used for fixed microwave services largely by electric utilities and oil pipelines. Millicom hopes to use CDMA/spread spectrum technologies to transmit the voice signal at very low power levels over a wide spectrum. The emitted power is supposed to be low enough not to interfere with other signals in the band. Also, PCN users generally would operate at street level, away from the much higher path of most fixed microwave antennas.

The experiments only recently began, and the question of whether CDMA can actually work with a large number of users won't be settled for some time. Some industry experts argue that CDMA/spread spectrum is a proven technology that has been used for years in military applications. Other experts say the question is not whether CDMA works as an overlay technology but rather what capacity it can handle before significant interference develops.

CDMA's proponents claim that ultimately the system's capacity is 20 times that of current analog technology. To put this in context, according to Pacific Telesis¹, the two analog systems for Los Angeles can provide service to 600,000-900,000 customers (out of a population of 13.3 million), assuming 200 minutes of use per subscriber per month. This is equal to total potential market penetration of at least 4.5-6.8%. If CDMA were to simply double analog capacity (using only 50 Mhz; 150 Mhz is proposed), the potential penetration would be at least 9-14%. Thus, in Los Angeles, the second-largest market in the country, a doubling of capacity would be more than enough to satisfy likely penetration for 10 years or more, recognizing that at penetration rates this high, usage is likely to average much less than 200 minutes per month. (The cellular industry as a whole is currently gaining penetration at less than 1%

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annually.) In smaller cities, where usage per customer is typically lower, capacity would not seem to be much of an issue.

Fleet Call has proposed a different form of frequency reuse. It is materially different from Millicom's system in several ways, the most important of which is that Fleet Call would reuse bandwidth it already controls. The company is now a specialized mobile radio (SMR) carrier, providing dispatching services in New York, Los Angeles, Chicago, San Francisco, Dallas, and Houston. In April 1990, it applied to the FCC for wavers that would allow it to provide cellular-like services over its bandwidth in the 800 Mhz region (it has 5-8 Mhz in these markets). The Fleet Call system would use enhanced specialized mobile radio technology (ESMR) and a form of time division multiple access (TDMA) technology. Fleet Call claims it could maintain its dispatch service to existing customers and provide a competitive cellular operation using the same bandwidth.

The FCC essentially approved Fleet Call's petition in February, despite a massive lobbying effort against it mounted by the cellular industry. The Commission's decision was important for two reasons. First, it demonstrates the extremely pro-competition stance of the FCC. The agency had to run through a nightmare of administrative procedures to authorize Fleet Call's system (some questions remain as to whether its actions were legal), while resisting massive political pressure. This was not a no-brainer. Second, the Commission's decision is important because Fleet Call is likely to become a significant competitor in markets representing over 60 million pops. While its 5-8 Mhz per market gives it much less capacity than the existing cellular providers, it should be able to achieve more than 5% penetration in even its most capacity-constrained market. By the time it reaches that level, more powerful circuit multiplication technology may be available.

The possibility of moving existing users off a block of spectrum to allow for cellular-type use is potentially the most explosive politically. There is no technological barrier to doing this, and the FCC has cleared bandwidth in the past for other uses, such as fixed microwave, radio location, and maritime mobile. Certain bandwidths are not fully utilized, so it is possible for the FCC to move users from one block of bandwidth to another.

One potential problem is cost. Radios used at one frequency often don't work at another unless substantially modified, and sometimes must be replaced altogether, a

costly and disruptive process. Bandwidth incumbents can be expected to fight any change tooth and nail. Nevertheless, the FCC has forced relocations several times in the past and has recently indicated a willingness to do so again if necessary. Chairman Alfred Sikes has ordered the FCC staff to study the feasibility of establishing a spectrum reserve in the frequency range of 1700-2200 Mhz. The idea is to see if existing users in all or part of that spectrum can be placed elsewhere to create reserve capacity for new services and technologies.

The FCC chairman's targeting of 1700-2200 Mhz has some significance. This is the bandwidth that Millicom has identified as potentially appropriate for PCN-type services. There is not that much going on in large segments of this band, and the cost of moving the fixed microwave occupants would be relatively small. The primary occupants of 1850-1990 and 2110-2220 Mhz are the utilities and petroleum companies. These users have suggested that the cost of replacement equipment necessary to move them from these two bandwidths would be "at least" \$615 million and \$438 million, respectively. These figures may very well be exaggerated and, in any case, are not all that high. In cellular lingo, \$615 million is \$2.46 per pop (based on 250 million pops), while \$438 million is \$1.75 per pop. Many mobile operators would happily pay those costs to have a nationwide cellular franchise. Moreover, at 1850-1990 Mhz there would be room for at least two operators, who could split the already modest cost between them.

In conclusion, it appears that parts of the 1700-2300 Mhz spectrum are now inefficiently utilized. Even if CDMA/spread spectrum does not work well as an overlay technology, the FCC could very well reallocate frequencies for PCN-type services.

Politics

The development of U.S. telecommunications policy since the mid-1960s has been geared toward providing easier entry to new competitors. This has been primarily at the behest of the FCC but has been supported by Congress. As a result, we now have vigorous competition in the long-distance telephone business, and the FCC is promulgating rules that would open local exchange networks as well. In mass media, the agency has clearly signaled its desire for more competition by suggesting the repeal of rules that exclude telephone companies from the cable television business (although congressional approval would be needed).

The FCC appears to favor expanded competition in the mobile business as well, as indicated by Chairman Sikes'

proposed "spectrum reserve." As Greg Vogt, the chief of the FCC's Mobile Services Division, said recently in an article in *Cellular Marketing* magazine:

"I can repeat a statement that the Chairman (Sikes) said a couple of weeks ago — that the FCC really isn't in the business of protecting the value of any particular company's stock, that our goal really is to promote the availability of a lot of communications services to the public."

Private conversations with Commission staff indicate a similar desire to expand the market.

Of course, the Commission's job is politically difficult. The existing cellular operators would like to put the kibosh on competition or, at the very least, slow the entry of competitors. In that the incumbents include most major telephone companies in the U.S., the FCC has its work cut out for it. We believe, however, that the strong thrust of the FCC's policy, combined with a certain ambivalence on the part of the telephone companies (which want to provide PCN-type services themselves) will lead to the opening of the advanced mobile business to more new entrants.

Congress is unlikely to get in the way of the FCC, in our view. Representative John Dingell, chairman of the House Commerce Committee, has proposed the Emerging Telecommunications Act (which the House approved last session), aimed at finding spectrum now occupied but underused by the government and reallocating it for commercial use. While passage by the Senate and approval by the president is not assured, the proposal demonstrates the attitude of a significant body of politicians.

The government's road to opening up the cellular market will be easier and shorter if frequency sharing turns out to be feasible, but reallocation of bandwidth is certainly a real alternative. The politics will also be simplified if would-be carriers can convince the FCC and the Congress that they would provide the consumer with something new. Kicking someone off a bandwidth could be more easily justified in the name of "emerging technologies." The development of the next-generation cellular technology, i.e., a personal communications network, with millions of people able to perform multiple communications functions over small, inexpensive handsets, should prove very appealing to politicians and the Commission.

Economics

Assuming bandwidth is made available, the next question is whether companies will take advantage of the opportunity

to be the third or fourth carrier in a given market. There are various reasons for players to want to do so. For example, an existing cellular carrier might want to enter additional geographical markets to round out coverage and achieve economies of scale in advertising, maintenance, etc. Or an existing provider might want to take over additional bandwidth in order to minimize the opportunities for an insurgent to disrupt its duopoly. Of the many possible motivations for new entrants, we will focus on whether becoming the third or fourth carrier makes business sense in a given market.

There are many variables that are critical to the potential profitability of a new entrant. Among them are the number of entrants authorized; what part of the spectrum is allocated; whether the bandwidth is auctioned or, as in the past, awarded in hearings or lotteries; and the specific market's definition (city, MSA, region) and characteristics. Rather than perform endless scenario building to take into account the many possible permutations, we will look at the potential financial results for what we believe is a reasonable overall scenario. Our assumptions, for a 2 million pop MSA, include the following:

- The FCC authorizes two new entrants per MSA, operating in the 1850-1990 Mhz bandwidth.
- The technology used is CDMA with microcells.
- Each new entrant charges 30-40% less than the existing cellular providers.
- The annual national rate of penetration rises from 0.8% annually to 1.2-1.4%. (This assumption is derived from a recent survey of 1,200 households, including 273 cellular users, that we commissioned. Approximately 60% of respondents said they would be more likely to purchase cellular service if fees were 40% less.)
- Each new entrant takes half of the new incremental market growth, plus 10% of the prior (0.8%) annual penetration growth.
- The existing carriers reduce prices 10% the first year and 5% annually for the next four years.
- Cost of construction for the new entrants is \$15 per pop, plus an incremental cost per subscriber similar to that for the existing carriers. This is a conservative assumption. The cost of building a traditional cellular system is estimated at less than \$10 per pop. Some observers believe a mini-cell system would cost about the same amount, with the large number of cells offset

by a low cost per cell. We are aware, however, of developed technology that would bring mini-cell costs well below this level.

- Cost of sales per net addition is similar for new entrants and incumbents.
- Roaming revenues are zero at first but rise to 10% of the average bill after 5 years. (After all, roaming isn't built in a day.)
- Average usage per new customer is initially 125 minutes per month.

Tables A and B in the Appendix provide comparative income and cash flow statements for a hypothetical new entrant over a ten-year period. Based on our assumptions, the company's operating cash flow would become positive in year four, and it would reach operating profitability by year six. Operating margins would be 31% by the tenth year. By year six, free cash flow would be positive, and by year 10, the free cash flow return on net plant would exceed 20%. Not unexpectedly, the return on net plant is well below that of the incumbent cellular franchise, with its advantages of scale and better pricing. This is almost beside the point, however. The potential returns are still rich enough to induce a company to enter the market. The discounted cash flow analysis (see Appendix C) further demonstrates this. Assuming a \$30 million start-up cost (\$15 per pop), the free cash flows generated by the business will provide a return of 14-15% (after tax). Depending on the cost of debt, this implies a return on equity of 20-30%, certainly enough to encourage entry. If start-up expenditures could be reduced, returns would be even higher.

As a comparison, we also looked at this issue from the point of view of a company with the same cost structure as an existing cellular company (see Appendices D through F) to see whether it could earn acceptable returns while initially charging 30-40% less than in today's markets. We chose LIN Broadcasting as our guinea pig, since LIN operates in reasonably attractive markets of the type that might interest a new entrant. We used our base-case forecast for LIN but changed two variables, reducing prices 35% and lowering average minutes of use 20%, the latter because at least initially the insurgent would attract more low-end users.

The beginning of our forecast period is really the fifth year of Lin's cellular service; thus penetration in year one is almost 60 basis points, a good head start that we will adjust for in the valuation. In this scenario, operating profitability is reached very quickly (given the head start), as is positive

free cash flow. Similar to the first scenario, operating and cash flow margins rise to more than 30% by the tenth year, or not quite to the levels we forecast for existing cellular carriers. The return on net plant also rises to healthy levels, if not to those of our cellular forecasts.

According to our valuation analysis (Appendix C), the new competitor is worth approximately \$36-37 per pop, assuming a required after-tax return of 13-15%. Another way of saying this is, assuming that an after-tax return of 13-15% is adequate, an investor can invest up to \$36-37 per pop in capital and initial operating losses and still realize his required return. Thus, even with a relatively high capital cost per pop, significant early-year losses can be justified. LIN itself had positive operating cash flow in its cellular business within two to three years of start-up; exclusive of interest and start-up capital expenditures, losses were minuscule. Lower cellular fees would not have changed matters that much. With approximately 26 million pops, the total loss would have had to be about \$550 million after-tax (26 million times \$21 per pop) to exceed the \$36-37 per pop investment threshold.

While neither of the above analyses is pristine by any means, we believe they demonstrate that a reasonable, conservative business plan can support entry into the advanced mobile market. This conclusion dovetails with one's intuition: someone should be able to earn a decent return on an investment of \$15-20, or even \$35, per pop, when presumably rational businessmen in past cellular transactions thought the potential return merited an investment twenty times that. The head start and large coverage area enjoyed by the incumbent carriers is worth a lot, but not that much.

The Competitive Roll-Out

It is extremely difficult to forecast precisely how competition will evolve in the advanced mobile market. The following merely describes one set of likely outcomes:

- Fleet Call will roll out ESMR service in Los Angeles first, in 1993, and then in other authorized cities over the next two to four years. Other SMR operators will try the same thing in different markets and link with Fleet Call to provide roaming.
- Within the next several months, the FCC will issue a Notice of Proposed Rulemaking regarding the establishment of PCN-type services in the 1850-1990 Mhz range. Final regulations will be released in mid-1993. Authorizations of bandwidth will be made beginning in late 1993 or 1994, and service will begin

Cellular Competition Increasing

New Phone Service Gets FCC Approval

By John Burgess
Washington Post Staff Writer

Federal regulators yesterday opened the way for new competition in cellular telephone service, giving tentative approval to a small New Jersey firm to set up rival systems in six American cities.

The Federal Communications Commission said Fleet Call Inc. could install new digital technology that could expand by fifteenfold the capacity of two-way radio systems that it already operates for drivers and dispatchers of commercial trucking and delivery companies.

Fleet Call said it expects customers will use the added capacity to tie their radio systems into the conventional phone network in the same way that cellular systems operated by local phone companies and others do now. At the same time, the company would offer the service to individuals, who could make and receive calls on the move as customers of existing cellular companies can.

Some analysts believe the system might have disadvantages over today's cellular systems, however, such as the inability to make calls from neighboring service areas.

See FCC, D1, Col. 1

D8 THURSDAY, FEBRUARY 14, 1991

Cellular Phone Competition To Increase

FCC, From D1

While there are some differences in the systems, the practical effect of yesterday's FCC decision is to expand competition in the cellular industry by allowing three—rather than the current limit of two—companies to operate in the six cities. The FCC said it would be willing to consider granting licenses in other cities in the future.

** Pricing for the new cellular service has not been set. "We'll have to keep an eye on cellular prices, whatever they are in the next two years," said Morgan O'Brien, Fleet Call's chairman.*

The move was fought by the cellular

telephone industry, which since its inception in the early 1980s has operated under rules allowing only two companies to be licensed in each market. The 1990s are seeing new demands for radio services that range from satellite television broadcasts to wireless data networks. The FCC is trying to figure out ways to accommodate these demands to a broadcast spectrum, which by its physical nature is limited.

"We must encourage more spectrum-efficient technologies if we are to satisfy the demand for mobile communications in this country," said FCC official Michael Lewis.

The FCC has already licensed, on an experimental basis, systems that would use other frequencies to operate lightweight pocket telephones. Fleet Call's authorization, which still must obtain further FCC approval, is for a full commercial system in the six cities, on permanent frequencies.

Privately held Fleet Call had sales last year of \$65 million. To build the six systems, which it estimates would cost about \$700 million, it will need to line up a major corporate partner to help with financing. O'Brien said the company hopes to begin operating the new service in Los Angeles in two years. It also has the go-head to build systems in Chicago, New York, Houston, Dallas and San Francisco, a job it hopes to complete by the end of 1995.

HOLDING A PORTABLE CELLULAR PHONE

58

Brian McAuley of Fleet Call with dispatch radio and portable phone

"If you own 50 miles of beachfront in Hawaii, you ought to be able to put up some nice hotels."

Steve Winter



Computers/ Communications

Why is cellular centimillionaire Craig McCaw trying to stop Fleet Call from upgrading its two-way radio service? Could McCaw be worried about competition?

Look out for the taxi dispatchers

By Gary Slutsker

THESE ARE tough times for investors in cellular stocks. They took a hit late last year after Prime Minister Margaret Thatcher opened up the British cellular industry to competition from personal communications networks—it hasn't happened here, but it might one day.

The highfliers took another hit recently when Motorola announced its stunning plan to run a worldwide cellular system in the sky called Iridium.

Now comes another competitive threat—not from a futuristic technology, but from something as unglamorous as the taxi dispatch business. A clever startup called Fleet Call Inc., in Bloomfield, N.J., is trying to turn its

collection of dispatch operations around the country into something that is almost identical to a cellular phone system.

Fleet Call wants permission from the Federal Communications Commission to upgrade its dispatch business. If it gets the permission, Fleet could set a dangerous precedent for the cellular business. Other mobile radio operators, including the likes of Motorola and other creative technologists, could eventually do a lot of damage to the comfortable duopoly of the cellular business. At present only two companies can operate cellular phone service in any given area.

No surprise, then, that several large cellular operators, including Craig McCaw's McCaw Cellular Communications, are quietly lobbying against Fleet's petition. The heavyweight lawyer fighting Fleet for McCaw is former FCC chairman and current FCC powerbroker Richard Wiley.

The brains behind Fleet are Morgan O'Brien, 45, a former FCC staff lawyer, and Brian McAuley, 49, a onetime executive at Millicom Inc., a cellular and paging outfit. The two men formed the company in 1987 and began buying up FCC licenses in the specialized mobile radio band. This mobile band business is worth about \$400 million a year in service fees and

equipment sales. It provides wireless dispatch service to taxi fleets, plumbers and other small businesses. Mobile radio operators may also complete phone calls for their mobile customers, at an additional cost, though this is now a small part of their business. O'Brien and McAuley have asked the FCC for permission to use new technology that would dramatically expand the capacity of channels they already control.

Fleet Call had \$30 million in revenues last year, small potatoes next to, say, McCaw Communications' \$504 million. But it has giant ambitions. Here's how Brian McAuley, Fleet's president, describes his outfit: "If you own 50 miles of beachfront in prime areas of Hawaii and all that's on there now are shacks, you certainly ought to be able to put up some nice hotels."

Right now, Fleet Call is limited to beach shacks by its restrictive FCC license. The FCC merely lets mobile band operators blast signals throughout a metropolitan region from several high-power antennas using exclusive frequencies. In New York, for example, Fleet Call gathers transmissions from around the metropolitan area for retransmission, using over 40 antennas and 200 repeaters placed at several sites, including the Empire State Building.

O'Brien and McAuley want to increase their calling capacity and quality simply by using some of the same tricks the cellular folks have adopted. First, they want to divvy up cities into shifting, amoebalike cells that permit their precious frequencies to be reused every few cells, a process the cellular industry has used to expand capacity. Next, they want to switch to new digital transmission equipment and trade their bulky radio sets in for the same portable phones used by cellular operators.

If the FCC grants its wish, Fleet Call will increase its capacity over fifteenfold, enough to keep its existing dispatch customers and expand by attracting cellular customers.

Fleet Call has a lot of money riding on the FCC application. After talking venture capitalists at First Chicago and Chase Manhattan banks into providing \$80 million in equity and access to debt financing, O'Brien and McAuley paid about \$250 million to acquire 1,600 or so of these dispatch channels in New York, Los Angeles, Chicago, San Francisco, Dallas and Houston.

In Los Angeles, for example, Fleet Call controls almost 9 megahertz of the electromagnetic spectrum, about 1½ times the space of a single televi-

sion channel. For that space it paid an average of \$5 million per megahertz. This is darned cheap compared to what cellular systems currently fetch. McCaw Communications recently acquired a part interest in a Los Angeles cellular system controlling 25 megahertz. McCaw paid the equivalent of \$166 million per megahertz.

If the FCC lets Fleet Call upgrade, the taxi dispatch channels will become vastly more valuable—and McCaw's will be somewhat less valuable. In competing with cellular operations, Fleet will have plenty of pricing flexibility, thanks to intense competition in the fragmented mobile radio business. Customers were paying \$15 for 75 minutes of airtime on a frequency that was functionally equivalent to a cellular one where cellular was getting \$100 for the same thing, says McAuley.

There are some hints that the agency will come down on the side of competition. FCC Chairman Alfred Sikes has campaigned for more efficient use of the radio spectrum. For example, the cellular industry has adopted new digital standards without having to get FCC permission.

In some areas, the FCC has dropped the need to allocate frequencies for different kinds of services altogether. For example, holders of satellite transponder licenses may transmit phone calls, data and TV and radio programming—all simultaneously. Yet else-

where in the spectrum, services are strictly segregated. Fleet's application shows how technology mocks the FCC's rigid, outdated zoning laws. If the FCC relaxed those laws, the free market would quickly decide how best to use the spectrum.

Already the mobile radio band is starting to bristle with new technology. Last year the FCC let New York-based Ram Mobile Data set up a nationwide digital all-data network using mobile radio channels. The big fellows are moving in, too. Motorola, a large holder of mobile radio channels, recently started selling a data messaging service over some of its frequencies to trucking companies. Moving a lot of dispatch traffic to more efficient data services would free up more capacity for phone calls.

Will local regulators object to having a third player in the cellular business? Not likely, if the newcomers start by competing on price. "No public service commission in the country is going to say, 'Don't lower your rates,'" says McAuley. Lower rates could be a serious blow to cellular operators, many of whom have big debt burdens assumed in buying their systems.

News of this and other potential setbacks have already knocked billions of dollars off the market value of cellular stocks and bonds. But have the price declines fully discounted the threats? ■

Making loans to young high-tech companies only sounds risky. That's why Silicon Valley Bancshares is so profitable.

Electronic banking

By Ralph King Jr.

PLEXUS COMPUTERS, one of those rockets that Silicon Valley is noted for, streaked upward and then crashed, filing a bankruptcy petition in March 1989. Venture capitalists and other creditors lost at least \$40 million. But Silicon Valley Bancshares, Plexus' primary lender, recouped its \$344,000 loan by collecting

on the firm's receivables, which it had secured.

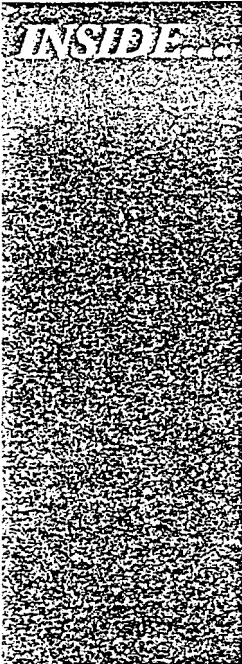
As its name suggests, Silicon Valley Bancshares makes a lot of loans to the high-tech industry on the San Francisco peninsula. Customers include mid-size firms like Chips & Technologies and SynOptics Communications, and tiny ones like Trimble Navigation. It also makes general commercial loans and construction loans for expensive

MOBILE INSIDER

THE FINANCIAL NEWSLETTER TO THE MOBILE COMMUNICATIONS INDUSTRY

February 19, 1991

Volume I, Issue 12



- ▼ Fidelity Buys Majority Stake in DRN2
Once more, Fidelity Capital is putting its money where its mouth is by purchasing more than 50 percent of this Virginia POS RF service provider. The company will take on new projects under a former CompuServe executive.
- ▼ George Hertz On SMRs, The Economy, Survival and The Future4
To make it in today's environment, this SMR expert cautions operators to be independent, network themselves, affiliate with other carriers and find ways to provide new products for their customers.
- ▼ Fleet Call Gets the "Full Green Light" to Proceed with ESMR6
Last week, the FCC approved, with some modifications, Fleet Call's proposal for an enhanced SMR system. What the commission needs to do now is rethink the rules in 1990 terms to avoid another "tortured course" waiver request.
- ▼ Mobile Insider Trading: Cellular Fund Looks to Build, Sell Midwestern RSA Properties7
JMB Realty, CyberTel Cellular and IDS Financial Services want to sell 100-plus shares in their new cellular fund, but may kill the deal if less than \$35 million is raised by June. Also, stock picks on the rebound!

PAGING

*New Buyers Club May Save
RCCs Thousands*

Members of Telocator's executive staff acted on an idea that had been on the shelf for several years and turned it into a plan that will help smaller paging members compete with their larger RCC counterparts. With the price of airtime falling faster than the price of new receivers, Telocator has contracted with NEC, Panasonic, Shinwa, Dial Page (representing Motorola) and International Telecom Systems (representing Hyundai) to offer pagers to Telocator members at reduced "buying club" prices.

According to Telocator senior vice
Continued on Page 3

CELLULAR

*Counterfeit Cellular Chips Make
It To Nation's Capital*

A grand jury decision was expected last week in Case No. 91-0070M in the United States District Court of Eastern Virginia against three men—one a Washington, D.C. police officer—charged with cellular fraud.

Cellular One, which competes with Bell Atlantic Mobile Systems in the area, found that more than \$50,000 in free calls had been made on its system between July 20 and October 10 of last year, and enlisted the help of the Secret Service's Fraud Squad to catch the users. Many of the calls had been traced to the Northern

Continued on Page 8

SMR

*AMS, Johnson Communications
Forge Deals on Florida,
Georgia Properties*

American Mobile Services and Johnson Communications are in the last stages of working out a four-property deal in Atlanta, Tampa, Orlando and Miami so that each can compete "without getting in each other's way."

While it seems that many top SMR operators and all of the manufacturers around the country have been aware of this deal for about a year, all the details have yet to come to light. AMS, being a public company, has filed papers with the Securities &

Continued on Page 5

Fleet Call Gets The "Full Green Light" To Proceed With ESMR

At presstime, the FCC finally released its decision on the Fleet Call waiver (*Mobile Insider*, January, p. 1). As a result, the SMR probably will begin filing its base station applications in the near future to begin the long transitioning process from analog to digital, starting with its California markets.

"I'm very excited," said Fleet Call chairman Morgan O'Brien immediately following the February 13 open meeting. "We have been given the complete green light. We got more affirmation (for the concept) than we thought we would." O'Brien will be selecting an equipment vendor soon, with a prototype digital SMR unit available for testing within two years.

The industry sees this as a victory over the pressures put on the FCC and Congress by the cellular industry, which was trying to block the waiver request because of perceived competition for subscribers. There also was some question that Fleet Call, with its proposed 15-fold increase in channel capacity, would be inclined to resell interconnection capacity for a profit, thus making it a common, and not a private, carrier. Reselling excess capacity on SMR channels for profit is prohibited by the commission.

Waiver Changes

While the commission did not grant all of Fleet's requests, it did emphasize that most of the things the SMR had asked for in its filing last April already were permitted under commission strictures. Fleet had requested a 35-mile buffer zone around the service areas of its existing base stations that would define its areas of operation, but the FCC rejected this request, preferring to wait for the outcome of recently proposed rule changes

that would permit separations of less than 70 miles if no interference is demonstrated.

What the commission did agree with is an extension of normal SMR buildout time, giving Fleet Call five years to build its digital system in any newly licensed stations. Fleet Call has spent about \$750 million on its system so far, and owns 150 channels in six markets, serving 150,000 customers. The FCC also declined to grant Fleet's request for blanket wide

Last week, the FCC approved, with some modifications, Fleet Call's proposal for an enhanced SMR system. What the commission needs to do now is rethink the rules in 1990 terms to avoid another "tortured course" waiver request.

area operating authority. Instead, each of Fleet's base stations will have to be licensed individually. The Private Radio Bureau estimates that licensing a Fleet Call base station may take 90 days because of the waiver situation, adding about 30 days to normal base-station licensing.

Commissioners Nod

There were few reservations voiced by the commissioners before they voted on the waiver request. Commissioner Andrew Barrett wants to monitor Fleet Call to make sure it does not resell interconnection services. He also wouldn't mind requiring Fleet Call to save billing records to make sure any cost savings are passed on to its subscribers.

Elderstatesman James Quello (whose staffers have been heavily lobbying the powers that be to ensure him another term) said that approval of this waiver would increase private land mobile spectrum efficiency. He also was concerned about putting any additional safeguards (read roadblocks) on Fleet Call lest the advent of digital SMR services be set back.

Commissioner Sherrie Marshall called the ten months leading up to this decision "a tortured course," and wondered if the FCC should have instigated a rulemaking in the matter instead of approving waivers. "The FCC rules may need to pass a reality check concerning the way things are today," she said. Marshall also speculates that Fleet Call competitors will now ask for the same waivers. (*Mobile Insider* asked SMR insiders attending the meeting and PRB chief Ralph Haller who would have pockets deep enough to attempt building an enhanced SMR system like Fleet Call's. All answered, "Motorola.")

Freshman Commissioner Duggan pointed out that if the commission is sworn to do anything it could to promote new services, better technology, competition, etc., then it should approve the Fleet Call waiver request. "This item does all this but it also created a firestorm of controversy," he said. "But we must support the values that are the bulwark of the commission." The commissioners then voted unanimously to award Fleet Call an amended waiver.

"The FCC showed some backbone," commented Russell Fox, president of the American SMR Network Association. "It was good to hear the verbal spanking the cellular industry took from the bench." ♦

Inside

Bundling competition

Making changes that should please cellular carriers, the FCC has proposed to permit "bundling" of cellular equipment and services and to relax resale guidelines 3

Lockdown update



John Stupka, head of CTIA's technology committee and president of Southwestern Bell Mobile Systems, is one of many industry experts

following the progress in the commercial lockdown procedure 13

Increasing market presence

Hutchison Telecommunications, already with several U.K. mobile communications purchases under its belt, has announced its acquisition of BYPS Communications 22

Fleet Call's ESMR plan wins necessary approvals

By Margot Moody

WASHINGTON—The Federal Communications Commission has helped pave the way for the introduction of digital technology into the private land mobile communications industry through its conditional approval

of Fleet Call Inc.'s proposal to build digital specialized mobile radio systems in six major U.S. cities.

Fleet Call, the nation's second largest SMR operator, has proposed to convert its analog SMR systems in Chicago, Dallas, Houston, Los Angeles, New York, and San Francisco into integrated, digital transmission systems. The firm submitted its plans and a request for rule waivers to the commission on April 5, 1990.

The commission addressed the matter here at a Feb. 13 open meeting, despite concerns raised late last year by House Energy and Commerce Chairman John Dingell, D-Mich., and telecommunications subcommittee head Edward Markey, D-Mass., as to whether a waiver would be the appropriate procedure to address such an issue in lieu of a rule-

Turn to . . . Fleet Call, Page 22

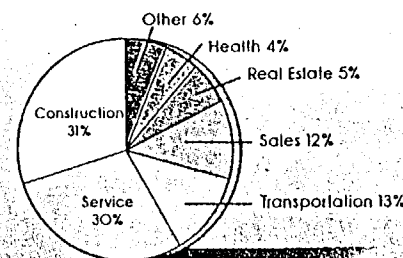
Bush proposes auctions, fees for FCC income

By Jeffrey Silva

WASHINGTON—Nearly half of the Federal Communications Commission's proposed \$133.4 million funding for fiscal 1992 would come from \$65 million in collected user fees—an initiative that currently lacks congressional approval—according to President Bush's budget package presented to Congress earlier this month.

That measure, together with a reworked spectrum auction initiative, will likely be closely scrutinized when the FCC goes before House

SMR END-USER PROFILE



Source: EMCI Inc., based on ASHA/EMCI SMR Industry Survey, Sept. 1990

According to a recent survey conducted by EMCI, the number of SMR units should increase by as much as 20 percent over the next several years throughout the major end-user groups. Turn to Page 17 for further survey results.

Nokia putting up \$66 million cash for Technophone

By Seth Malgieri

HELSINKI, Finland—Facing what one analyst termed a "grow-or-die" situation in the changing world economy, Finland-based Nokia Corp. announced it will pay \$66 million cash for cellular telephone manufacturer Technophone Ltd. of Britain.

The pending acquisition by Nokia will boost its annual cellular tele-

Mobile products finding a home in office setting

62

... Fleet Call

From Page 1

making proceeding.

The waiver proposal had also received resistance from the cellular industry, which voiced regulatory concerns regarding the similarity of the proposal's architecture to that of cellular systems.

Robert Maher, president of the Cellular Telecommunications Industry Association, said he was disappointed in the FCC's decision.

Maher noted, however, that CTIA's

response was not based on fear of competition.

"We opposed Fleet Call because we saw it trying to change the very nature of the private radio service without benefit of public debate," he said. "Fleet Call will provide a link to the public telephone network without facing the obligations we and other common carriers face—state regulation, excise taxes, resale, etc."

Although the commission did not grant Fleet Call the full scope of its requested relief, officials at the com-

pany were very pleased with the outcome.

Morgan O'Brien, the company's chairman, called the commission's ruling "a victory for the SMR industry [which] has cleared the way for Fleet Call to play an increasingly important role in perhaps the most dynamic sector of the telecommunications industry."

Fleet Call said its Enhanced Specialized Mobile Radio Service "features vastly improved quality and capacity compared to traditional SMR."

Through digital transmission and other technologies, Fleet Call has said it can provide 15 times more user capacity than existing systems without using additional spectrum.

Fleet Call also requested a single license for each of the six markets authorizing it to construct and operate multiple, low-power base stations that would reuse frequencies at any given site. The commission denied the request, however, and said that, based on existing policies, each base station would need its own license.

Fleet Call also requested protection from nearby SMR operations through a 35-mile "buffer zone" around the service areas of its base stations. Other licensees would be allowed to locate outside the buffer zone and serve areas within the zone, provided their base stations were at least 70 miles from any of Fleet Call's base stations.

Noting a recent proposal for rule changes that would permit separation of less than 70 miles if an applicant could demonstrate that no harmful interference would result, the agency deferred action on this request pending the outcome of the short spacing rulemaking (See story on Page 5).

The commission did, however, grant the firm's request for an extension of its construction period for any newly licensed stations from the usual one-year period to five years, based on the "technical difficulty of the proposed system."

To date, Fleet Call has invested at least \$500 million in construction of its market-wide digital system. □

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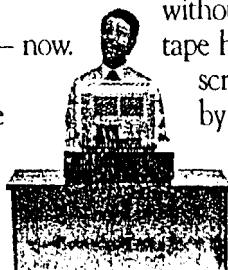


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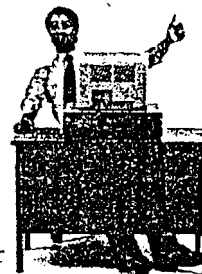
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E.F. Johnson founder succumbs to cancer

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53

Industrial Communications™

mobile radio's newsletter since 1946

February 15, 1991
 Washington, D.C.
 Issue #7

Dear Executive:

FCC GIVES FLEET CALL'S ESMR SUPPORT WITHOUT WAIVING RULES

The FCC action on the Fleet Call waiver this week was a good news-bad news scenario for the second-largest SMR in the nation. The bad news was the FCC didn't grant the majority of the company's proposed waivers. However, the good news was that Fleet Call doesn't need the waivers to set up its wide area digital Enhanced Specialized Mobile Radio (ESMR), according to FCC officials.

Declaring that current rules already give Fleet Call the latitude to build ESMR, the FCC gave the go-ahead for the low-power multi-transmitter digital SMR network. "The differences in what Fleet Call asked to do and what we are granting it are very, very minor," said Private Radio Bureau (PRB) Chief Ralph Haller.

"Our review of the issues leads us to conclude that many key components of Fleet Call's proposed design are already permitted under the rules without waiver," Mike Lewis, PRB senior engineer, told the FCC open meeting held Wednesday. "Because we can rely on the flexibility inherent in the current SMR rules, it is appropriate to dismiss most of the requested relief relating to administrative manners."

The PRB commended Fleet Call for asking for increased spectral efficiency instead of asking for more spectrum. But, Lewis said, "We must ensure that the rights of all are protected before allowing Fleet Call to proceed."

Fleet Call Will Have 5 Years to Construct

Fleet Call did receive a waiver to construct its system over a 5-year period. Construction periods are usually one year. The SMR plans to build ESMR in 6 of the largest U.S. markets--Los Angeles, San Francisco, New York, Chicago, Dallas and Houston. Currently, in the 800 MHz band, Fleet Call serves 120,000 users on 1,700 channels. The proposed network adapts frequency reuse and digital technology to increase capacity from 15 to 30 times analog.

In rejecting Fleet Call's request for blanket wide area authority, the FCC affirmed that wide area service could be offered, but each base station of the system would need to have an individual license. Without the blanket waiver of the 70-mile rule, which is the required distance between transmitters, Fleet

- FCC Says Fleet Call Network Would Not be a Common Carrier 2
- Marshall Calls for Update of SMR Rules to Prepare for Digital 3
- Fleet Call Pleased With FCC Action; CTIA Dismayed 4
- Alien Ownership Issue Holding Up Multitude of RSA Licenses 7
- Universal Cellular Shows its Hand in Worldwide Market 10

Call will have to file for a waiver with a technical showing and concurrence in order to short space its system. But even that waiver is on the endangered list. In a recent Further Notice of Proposed Rule Making, the commission sought to allow short spacing requests based on technical showings without requiring a waiver.

The issue of allowing digital station identification, the subject of another waiver request, will be dealt with in a separate proceeding.

The FCC found there was no need for Fleet Call's request for a 35-mile buffer zone in its Enhanced Geographical Area. "The existing rules provide for 70-mile protection around each base station," Haller said.

The cellular industry brought up several issues in the comment period. It questioned whether an ESMR system shouldn't be regulated as a common carrier because of its similarities to cellular and its increased interconnection capabilities. Commenters also wondered what would happen to Fleet Call's analog customers upon changeover to digital and whether a rulemaking would be more appropriate. Fleet Call doesn't have any incentive to price its product beyond the means of its market, Lewis said.

FCC Rules ESMR Not a Common Carrier

"Interconnection with the public telephone network is permitted in the private land mobile service," Lewis said. "The difference between common carrier and private carrier does not depend on capacity. Nothing in the records indicates that Fleet Call would have anything but a private carrier service." Section 332 of the Communications Act prohibits private carriers from reselling interconnect services at a profit.

"Section 332 is not a percentage test of dispatch versus interconnect," Haller said. "It relates to how you provide interconnect services and you can't do it for a profit."

Although he pledged his support, Andrew Barrett, FCC commissioner, said that he was still concerned about the common carrier status and he did not want his vote setting a precedent for similar proposals in the future. "My concern is that Fleet Call's resale of telephone service receive a high level of scrutiny," Barrett said. "We want to make sure that they are passing through the interconnect costs." But FCC Commissioner Ervin Duggan blasted the opposition, most of it from the cellular operators, that rose up against the Fleet Call waiver request. "If we are sworn to do anything as FCC

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commissioners, it is to support technological innovation, more efficient use of the spectrum, improved service by licensees and heightened competition," said Duggan. "This item does all these things and yet it created a firestorm of opposition. The favorable outcome of the Fleet Call waiver is a testament to the...intestinal fortitude of the chairman and my colleagues."

"We opposed Fleet Call very strongly, because we believe they are taking a private service and turning into a common carrier service without taking on the responsibilities and obligations of a common carrier," said Norman Black, Cellular Telecommunications Industry Association spokesman. "People, including Fleet Call, who claim that we were fighting them just because we were afraid of competition are just wrong."

"We are not afraid of competition," Black continued. "ESMR will never be able to match the services and capabilities of cellular."

The commissioners appeared receptive and supportive of the PRB's proposal at the meeting, unanimously passing it with the usual voice vote. "I support the item. The Fleet Call proposal has the potential of increasing spectrum efficiency in land mobile technology for years to come," said James Quello, FCC commissioner. "There is much comment on being procedurally correct and I want to be procedurally correct, but not if it's a delay tactic by some people who don't want the competition."

Marshall Calls for a Rules Update

FCC Commissioner Sherrie Marshall supported Fleet Call, but favored a rule-making procedure. "I would be remiss if I didn't express my concern over the tortured course this proceeding has taken with its waivers, rulemaking threats and back and forth," said Marshall. "The very fact that Fleet Call felt that it needed so many waivers of our rules to create a state-of-the-art SMR system indicates that our rules need to be reviewed to see if they pass a reality test of today." Current loading rules for analog will not be usable with digital, and requirements for station identification in either voice or Morse Code will also be defunct, she added.

Haller, at a press briefing, said that a proceeding dealing with station identification would be initiated.

"For us to have to waive the short-spacing rule at least 40 times over the last few years suggests that there may be some problems with the reality of that rule too," Marshall said. "I would have preferred a rulemaking to bring our rules up-to-date." Duggan said that he looks forward to doing a complete review of the rules.

"The 70-mile rule was based on 1,000-watt stations with 1,000-foot antennas," Haller said. "As you reduce power or antenna height, that 70 miles is no longer necessary. We have granted many waivers based on that premise." The waivers also require an extra fee, he added.

Since systems like Fleet Call's and Ram Mobile Data's require more time to construct, they should be provided the time without a lengthy waiver process, Haller said.

PRB to Move Quickly on Fleet Call Network

The commissioners directed the PRB to move quickly in licensing the ESMR system, and Fleet Call will begin submitting applications immediately. Individual licensing of base stations will not hamper Fleet Call from a time

67

standpoint, Haller said. "For each short-spaced base, they would need to make a showing but it could be authorized within 50-70 days if it doesn't cause interference to other users," Haller said. "It will call for additional paperwork but not significantly more time." A waiver can extend the process to 90 days.

Fleet Call's present system meets the aggregate loading rules, Haller said, which qualifies it for additional channels and continued exclusive use of its channels. SMRs are only required to certify loading once.

Fleet Call Pleased With FCC Action

Fleet Call officials were all smiles after the FCC acted on their waiver, which was filed in April of 1990. "We are pleased with the FCC decision," said company chairman Morgan O'Brien. "It is an endorsement of a concept that the commission created back in the 1970s. We believed what the FCC said about wanting to encourage new technology and we acted on it. With this endorsement, we are going forward full speed ahead."

Even though the waivers were not granted, O'Brien said that Fleet Call got what it wanted. "It is our understanding that they gave us the relief we requested, but not in the form that we asked for it," he said.

Los Angeles will most likely be the first network up and running, and it should be in service within 2 years. Fleet Call denied that its service and equipment would be priced out of reach of its customers.

At a press conference held the same day of the FCC's meeting, Brian McAuley, president and CEO, said, "We expect the subscriber equipment we will use will not be more expensive than digital cellular equipment. They will be using dual-mode phones, while we will be strictly digital mode device. Also, a lot of the technology is the same and there has been a lot of research done on time division multiple access."

WHY COPY TO CR?

O'Brien said that he has already talked on a TDMA mobile prototype. Commercial mobile units should be out in a 21-month timeframe. Portable versions should trail by only 3 months. "This is a technology that was farther along than we thought," he said.

Fleet Call officials still are not able to divulge whether the technology they are going to use will be open or proprietary. "There is the possibility that it could be proprietary, but more likely we will want the largest number of manufacturers making our phone, competing with each other which will drive down the price."

CTIA Officials Not Pleased With Waiver Grant

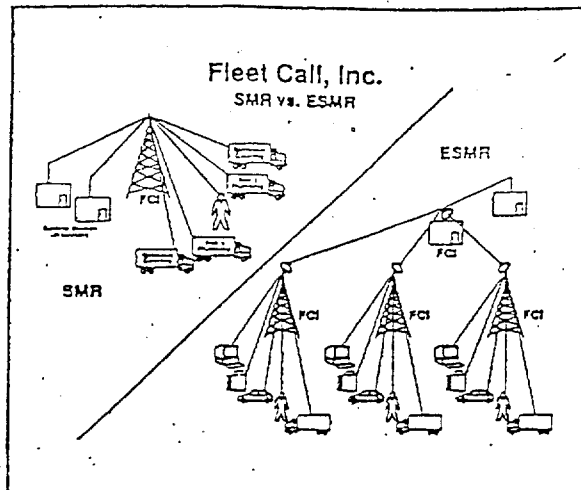
On the other hand, CTIA officials were disappointed with the FCC decision. "They might not be able to do it quite as fast, but there is no question that Fleet Call won," Black said.

"We took advantage of every opportunity we could under the rules to present a contrasting viewpoint, instead of having something just get steamrolled through on the basis of a waiver, when we believed that it was something that should have been handled by rulemaking. While we are not worried about Fleet Call being a competitor, we are worried about the legal precedent that appears to be set here," Black continued. "What about in 5 years when another private carrier wants to provide cellular telephone service?"

CTIA President Robert Maher added that he has "little doubt Fleet Call's dispatch customers will be pushed aside in favor of customers who want to make phone calls." The association does not plan to appeal the decision to the courts at this time.

FCC Move Finds Favor With SMR Industry

While the cellular industry lobbied both the FCC and Congress heavily against the Fleet Call waiver request, the National Association of Business and Educational Radio (NABER) held meetings with Fleet Call to discuss the new technology. "There are 2 very significant things for the industry: one is that it makes possible for the industry to move forward in digital technology," said E.B. "Jay" Kitchen, NABER president. "With the attacks of the cellular industry, it is a clear victory for the private side. The commission rejected any comments that SMR or ESMR are common carrier services. The private carrier status became an important issue."



The American SMR Network Association (ASNA) also worked hard to unify the SMR industry with Fleet Call on its waiver proposal. ASNA President Russell Fox agreed with Kitchen.

"The FCC made it abundantly clear that what Fleet Call is doing poses no threat to its private carrier status. That is a very big victory for all SMRs," Fox said. "Had the commission wavered on the common carrier/private carrier issue, many SMRs would have been in trouble." ASNA has a number of rural members that offer predominantly interconnected service.

"The FCC has given Fleet Call the clarity it needed," Fox said. "In some respects, the FCC gave them an even better answer than they wanted. The commission said, 'You don't even need waiver. You can do it under the current rules.'"

Fox also highlighted the fact that the FCC judged that Fleet Call will not need any waivers of the 40-mile ownership rule, because of aggregate loading.

"This is the first time that the commission has talked in terms of aggregate loading for the SMR industry," Fox said. "I think it makes a lot of sense to look at aggregate loading when someone is proposing a regional system. This represents significant opportunities for other SMRs. If this is a signal that you can do regional operations if your aggregate loading supports it, maybe more SMRs will be interested."

Fox also believes the 5-year construction period should be of some importance to the SMR industry. Other SMRs that want to convert large, regional systems to digital may be able to use the slow-growth waiver.

Chris Rogers, chairman, Dispatch Communications, was also satisfied. "As another large SMR we are pleased for the same reason that Fleet Call and the rest of the SMR industry are," Rogers said. "The FCC saw fit to foster the next generation of SMR--the move into digital. It was good to hear them disregard the variety of already-settled regulatory arguments that the opposition threw up against it."

APPENDIX B - THE TELOCATOR PROCEEDING

In the Matter of
Amendment of the Commission's Rules
to Authorize Cellular Carriers To Offer
Auxiliary and Non-Common Carrier Services
RM-7823

NARUC'S NOVEMBER 8, 1991 OPPOSITION

NARUC'S NOVEMBER 8, 1991 OPPOSITION TO TELOCATOR'S PETITION

Pursuant to Sections 1.4 and 1.405 of the Federal Communications Commission's ("FCC" or "Commission") Rules of Practice and Procedure, 47 C.F.R. Sections 1.4 and 1.405 (1991), the National Association of Regulatory Utility Commissioners ("NARUC") respectfully files these comments in opposition to the September 4, 1991 "PETITION FOR RULEMAKING OF TELOCATOR" filed in the above-captioned proceeding. [The Petition was publicly noticed in FCC Report No. 1864 (20136) on October 9, 1991]. In opposition to Telocator's request, NARUC states as follows:

I. NARUC'S INTEREST

NARUC is a quasi-governmental nonprofit organization founded in 1889. Its member's include those governmental bodies of the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands, engaged in the regulation of carriers and utilities.

NARUC's mission is to improve the quality and effectiveness of public utility regulation in America. Specifically, NARUC is composed of the State officials charged with the duty of regulating telecommunications common carriers within their respective borders. As such, they have the obligation to assure those telecommunications services and facilities required by the public convenience and necessity are established, and that service is furnished at rates that are just and reasonable.

NARUC is concerned that the services proposed by Telocator are inadequately described, make use of spectrum allocated for common carriage, inconsistent with the statutory scheme, and, in light of the FCC's recent misapplication of Section 332 "functional test" in the Fleet Call order, may involve common carriage and thus be subject to regulation by the States, e.g., certifications standards, tariff requirements, non-discriminatory pricing prohibitions, complaint procedures, etc. See, 47 U.S.C. Sections 331(c)(3) and Section 332 (1990) and "{NARUC's} Petition for Reconsideration", filed April 15, 1991 in File No. LMK-90036 and addressing the FCC's **Memorandum Opinion and Order** ("Fleet Call Order"), In re Request of Fleet Call, Inc. released March 14, 1991, 6 FCC Rcd 1533(adopted February 13, 1991)(FCC91-56). NARUC respectfully requests that the FCC incorporate its reconsideration request and other comments in the Fleet Call proceeding into the record in this proceeding. If necessary, NARUC will refile duplicate copies. [The FCC recently denied NARUC's request for reconsideration on procedural grounds.]

To the extent the FCC is successful, during the appeals process, in getting NARUC's challenge to the order dismissed on procedural grounds, the merits of its current approach to Section 332's functional test can still be raised on appellate review.]

II. BACKGROUND

In 1982, Congress enacted Section 332(c)(1) to provide a "...clear demarcation between private and common carrier land mobile services." House Conference Report No. 97-765, Joint Explanatory Statement of the Committee of Conference on P.L. 97-259, The Communications Amendments Act ("House Report"), 97th Cong., 2nd Sess. 54, reprinted in, 3 U.S. Code Cong. & Ad. News '82 Bd. Vol., at pages 2237, 2298 (1983).

According to the conference report "...[t]he basic distinction...is a functional one, i.e., whether or not a particular entity is engaged functionally in the provision of telephone service or facilities of a common carrier as part of the entity's service offering. If so, the entity is deemed to be a common carrier." House Report, at 2237, 2298.

Significantly, in that report, the conferees also note that, although the FCC maintains its exclusive radio licensing authority, "...states retain full jurisdiction to engage in the economic regulation of common carrier stations (i.e., regulation of entry, rates and practices) consistent with Sections 2(b) and 221(b) of the Communications Act of 1934 (47 U.S.C. 2(b), 221(b) (1976)) to the extent they deem it necessary in the public interest to do so." House Report at page 2300. See also, NARUC v. FCC, 880 F.2d 422, 428 (D.C.Cir. 1989); California v. FCC, 905 F.2d 1217 (9th Cir. 1990). Moreover, the report goes on to note that the FCC "... may not use its licensing powers to circumvent limitations in its economic regulatory jurisdiction over common carrier station. {Emphasis Added}" House Report, at page 2300. Compare, NARUC v. FCC, 533 F.2d 601, 619 (D.C.Cir 1976), where the court found that "the authority to experiment broadens the [FCC's] freedom to promulgate innovative and perhaps speculative regulations of activities over which it otherwise exercises regulatory jurisdiction. It does not, however, give the FCC power to regulate activities experimentally, where...{the Commission lacks general jurisdiction}."

On April 5, 1990, Fleet Call, Inc. filed a proposal to create "enhanced" specialized mobile radio ("ESMR") systems. On February 13, 1991, the FCC granted authority to deploy this new ESMR Service in six metropolitan areas.

The order notes that not only will Fleet Call provide, inter alia, "traditional dispatch service" which is not "functionally different from any service that it currently provides through its existing stations," but that "[a]dditionally, Fleet Call will be able to provide... interconnected telephone-type services." Fleet Call, mimeo at 5, para. 29. The FCC concluded that these changes did not affect Fleet Call's status as a "private land mobile carrier" under Section 332.

To the extent Fleet Call actually engages in common carrier service, this determination effectively preempts state regulation of ESMR. Fleet Call, mimeo at page 5, para.31.

On September 4, 1991, Telocator requested a rulemaking allowing cellular carriers to provide "auxiliary non-common carrier services" and classifying those services as "private land mobile services." In October, the FCC asked for comments on the proposal.

III. DISCUSSION

A. TELOCATOR'S PROPOSAL DOES NOT PROVIDE ENOUGH DETAIL FOR COMMISSION ACTION.

Telocator's proposal lacks sufficient detail for the Commission to take action. Telocator asks the FCC to amend "Section 22.930 and other relevant rules...to allow cellular licensees to provide auxiliary non-common carrier services under the Cellular Service Option." Petition at 2. Later, the petition notes that "[t]he Flexible Cellular Order cited a wide range of public interest reasons for permitting cellular licensees to pursue auxiliary service options...in the brief span of time since the adoption of the Cellular Service Option, the industry has been aggressively exploring a wide variety of new technologies to provide telecommunications over cellular spectrum. Ongoing tests are already examining such prospective services as wireless local area networks, wireless PBXs, tetherless network access, data networks, CT-2 services, personal communications networks and a host of other potential applications.[Footnote omitted] The 1988 rule changes opened the door to expeditious exploration and deployment of any such services ultimately found to meet a public demand or need."

However, other than this short listing, the petition does not present any details about, or even specify, actual services or technologies to be implemented under the rule. Moreover, other than some unsupported conclusory statements, the petition does not provide any rationale or explanation for why these "undefined" new services cannot be undertaken/provided under current regulations.

Indeed, Telocator's petition suggests that the Flexible Cellular Order, which specifically acknowledges the statutory prohibition against the provision of dispatch service by common carriers [3 FCC Rcd 7042-7043], has already "opened the door to expeditious..deployment of any such services ultimately found to meet a public...need..." - albeit on a common carrier basis. In addition, the FCC is already providing avenues that cellular carriers can utilize to invest in new services like PCN/PCS through other ongoing (e.g., PCN/PCS Initiative in Docket No. 90-314) and completed (e.g., FCC's Pioneer Preference Procedure) proceedings.